IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 814 OF 2005

WITH

CIVIL APPLICATION NO. 2051 OF 2005

Balu Maruti Chougule & Ors. ..Appellants

versus

Smt. Shobhatai B. Chougule ..Respondent

Mr. P. D. Dalvi for the Appellants.

Mr. A. B. Borkar for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 26TH SEPTEMBER, 2005

ORAL ORDER :

1. Heard counsel for the appellants and the respondent.

2. Appellants are the original defendants. Shobhatai - the plaintiff filed a suit for partition. She is a widow of one Bhimrao and the appellants are brothers of Bhimrao. Her suit was decreed by the trial court. That order is challenged by the original defendants on two grounds. Firstly, that there was a partition of the

property i.e. Bhimrao and other brothers . This fact is admitted by the plaintiff - Shobhatai in her evidence, and, secondly, that Bhimrao has sold his property to one of his brother for Rs.1,45,000/- under a Registered Sale Deed. That was a proof of earlier partition.

3. Both these contentions were raised by the appellants before the trial court but they were rejected by the Court. Firstly, on the ground that the defendants i.e. the present appellants neither in their original written statement neither in their amended written statement raised a plea of earlier partition between the brothers. Therefore the court held that any admission given by the plaintiff in the evidence about the earlier partition is of no consequence and use or help.

4. So far as Registered Sale Deed is concerned the court has come to specific conclusion that it was executed between the parties without any consideration and to avoid the claim of the plaintiff - Shobhatai against her brothers for maintenance. The findings are consistent with the facts and the record. The case putforth by the defendants in this case is totally absent in the written statement. Therefore, there is no merit in this Appeal, the same is dismissed along with Civil Application. No order as to costs.

26.9.2005 (D.G. DESHPANDE, J.)